

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

SEA WATCH INTERNAT'L, LTD.,	)	
	)	
Appellant	)	
	)	
v.	)	C.A. No. S11A-03-003 RFS
	)	
DANA MORRISON AND THE	)	
UNEMPLOYMENT INS. APP. BD.,	)	
	)	
Appellees	)	

This 20th day of October 2011, it appears to the Court that:

1. Sea Watch International, Ltd. ("Sea Watch") filed an appeal of a decision of the Unemployment Insurance Appeal Board ("Board") granting unemployment benefits to Dana Morrison ("Morrison") for a time specified by the Department of Labor, Division of Unemployment; and
2. Morrison failed to file an answering brief in compliance with the scheduling order; and
3. Morrison did not respond to the final delinquent notice; and
4. Morrison was given an extension of time and notice that failure to file an answering brief by a date certain would result in Sea Watch's appeal being granted without further notice; and
5. Morrison did not file an answering brief despite multiple opportunities to do so; and
6. When a party makes no filing, showing or explanation of any kind, the Court must maintain its neutrality and will not advocate that party's position *sua sponte*<sup>1</sup>; and

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<sup>1</sup>*Sprung v. Selbyville Cleaners*, 2007 WL 1218683 (Del. Super.).

7. This Court has previously found that even where an appeal may not have been granted if the opposing party had complied with Super. Ct. Civ. R. 107, a board decision may be reversed because of the appellee's "failure to diligently prosecute and file its brief pursuant to Rule 107(e)"<sup>2</sup>; and
8. Morrison's failure to file an answering brief is a violation of Super. Ct. Civ. R. 107(e)<sup>3</sup>; and
9. As stated, Morrison received notice of the time to file an answering brief. He also received a final delinquent notice. Despite his continued silence, he was given an extension of time. No answering brief was filed. Morrison now stands in procedural default.<sup>4</sup>

Therefore, Sea Watch's appeal is **GRANTED**, and the Board's decision is **REVERSED**. The cause is remanded to the Board for action in accordance with this Order.

**IT IS SO ORDERED.**

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Richard F. Stokes, Judge

Original to Prothonotary  
cc: Dana Morrison  
Thomas H. Ellis, Esquire  
David N. Rutt, Esquire

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<sup>2</sup>*Crews v. Sears Roebuck & Co.*, 2011 WL 2083880, \*3 (quoting *Hunter v. First USA/Bank One*, 2004 838715, \*5 (Del. Super.)).

<sup>3</sup>*Elder v. Careers USA*, 2011 WL 3081437, \*1 (Del. Super.).

<sup>4</sup>*Byrd v. Westoff USA, Inc.*, 2011 WL 3275156, \*2 (Del. Super.).